

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

UNITED STATES OF AMERICA
ex rel. LORRAINE A. PITTELLI

Plaintiff,

CIVIL ACTION NO.
01-CV-2379

v.

KEYSTONE MERCY HEALTH PLAN

Jury Trial Demanded

Defendant.

UNITED STATES' COMPLAINT-IN-INTERVENTION

Plaintiff the United States of America files this Complaint-in-Intervention in substitution for and superseding the allegations and claims in the Relator's Complaint only as to the claims described herein.

Plaintiff United States of America alleges as follows:

PARTIES

1. Plaintiff is the United States of America ("United States").

2. During the period from at least 1995 through the present, defendant Keystone Mercy Health Plan ("KMHP") was a Pennsylvania partnership that operated a managed care plan for Medical Assistance recipients in the Southeast Pennsylvania region pursuant to a contract with the Pennsylvania Department of Public Welfare. KMHP operated an office at 200 Stevens Drive, Philadelphia, Pennsylvania 19113.

3. Relator Lorraine Pittelli is a citizen of the Commonwealth of Pennsylvania.

4. Relator filed the Complaint, a qui tam complaint, in May 2001.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction over this action pursuant to 31 U.S.C. § 3732(a) and 28 U.S.C. §§ 1331, 1345.

6. This Court has personal jurisdiction over the defendant as defendant transacts and/or, during the relevant period, transacted business in this District.

7. Venue is proper in this District under 31 U.S.C. § 3732(a) and 28 U.S.C. § 1391(b), (c). Defendant transacts and/or, during the relevant period, transacted business in this District.

FACTUAL ALLEGATIONS

Medicaid - Background

8. Title XIX of the Social Security Act of July 30, 1965, 42 U.S.C. § 1396, et. seq., (the "Act"), established a medical assistance program known as the Medicaid Program ("Medicaid" or the "Program").

9. Medicaid is a joint Federal-State program. At the Federal level, it is administered by the Centers for Medicare and Medicaid Services ("CMS") f/k/a the Health Care Financing Administration, an agency of the United States Department of Health and Human Services.

10. The Act provides, *inter alia*, that State Medicaid Programs must meet certain requirements in order to qualify to receive Federal Medical Assistance funds.

11. These requirements include the following: (i) the Program must be implemented Statewide; (ii) the Program must provide comparable services to all who qualify for Medicaid benefits; (iii) the Program must allow those who qualify for Medicaid benefits to be able to choose their health care provider; and (iv) the Program must provide for a plan to perform reviews and produce reports on the necessity and efficiency of health care services purchased with Medicaid funds.

12. Each state that participates in the Program must submit a "State Plan" for approval by CMS that requires, *inter alia*, each participating state to be the primary administrator for the program in that state.

13. The Commonwealth of Pennsylvania submitted a State Plan that has been approved by CMS and under which the Commonwealth administers the Program.

14. The Pennsylvania Department of Public Welfare ("DPW") is the Commonwealth agency responsible for administering the Program on behalf of the Commonwealth.

15. The costs of the Program are borne by both the Federal and State Governments. Any recoveries for the program are likewise distributed between the Federal and State Governments.

16. CMS, in conjunction with participating states, establishes eligibility requirements that an individual must meet prior to receiving benefits under the Program.

Medicaid Managed Care Plans - Background

17. In order to promote cost-effectiveness and efficiency, the Act authorizes CMS to waive, under specific circumstances, one

or more of the applicable requirements so States remain eligible to receive Federal Medical Assistance funding.

18. An example of such a waiver is when a State requires their eligible Medicaid recipients ("MA Recipients") to enroll in one of a series of designated managed care programs.

19. The Commonwealth, through DPW, operates a Medicaid managed care program in the Southeastern Pennsylvania Counties of Bucks, Chester, Delaware, Montgomery and Philadelphia Counties under such a waiver.

20. Citizens of the Commonwealth residing in these counties who seek Medicaid benefits must apply to DPW. If DPW determines that an individual is eligible for Medicaid benefits, the individual either voluntarily selects or is assigned by DPW to one of the several contracted managed care organizations.

21. Under this program, DPW contracts with several organizations to arrange for, and manage the provision of health care services to MA Recipients who require such services.

22. KMHP is one of several managed care organizations that has contracted with the Commonwealth under the Waiver to arrange for the provision of Medicaid benefits to MA recipients.

**KMHP'S RECOVERY OF COB FUNDS AND
FAILURE TO SUBMIT SUCH FUNDS TO DPW**

23. Under the DPW contract, KMHP was responsible *inter alia* (i) to pay healthcare providers for services rendered to individuals enrolled in KMHP's plan ("Enrollees"); (ii) to maintain third party liability data concerning other programs and carriers obligated to pay for services provided to Enrollees; and (iii) to

perform coordination of benefits ("COB"), so that, when applicable, other resources would be responsible for an appropriate part of the cost of such services.

24. In furtherance of performing these COB responsibilities, managed care plans including KMHP recovered monies and overpayments from third parties ("COB Recoveries"). The DPW contract contained provisions that gave DPW the exclusive right to proceeds of recoveries of certain overpayments if made after the expiration of specified stated time limits.

25. During 1997 and 1998, and in connection with healthcare services rendered to KMHP enrollees during such years, KMHP made substantial COB Recoveries beyond the applicable time frames and did not pay over such funds to DPW, as required.

Count One - False Claims Act, 31 U.S.C. S 3729(a) (7)

26. Plaintiff restates paragraphs 1-25, inclusive, as if fully set forth herein.

27. The defendant knowingly made, used, or caused to be made or used, a false record or statement to conceal, avoid, or decrease an obligation to pay or transmit money to the United States.

28. By virtue of the false claim, the United States has suffered damages and is therefore entitled to multiple damages under the False Claims Act, to be determined at trial, plus a civil penalty for each such false or fraudulent claim.

Count Two - False Claims Act, 31 U.S.C. S 3729(a) (2)

29. Plaintiff restates paragraphs 1-25, inclusive, as if fully set forth herein.

30. The defendant knowingly made, used, or caused to be made or used, a false record or statement to get a claim paid or approved by the United States in violation of the False Claims Act.

31. By virtue of the false record or statement, the United States has suffered damages and is therefore entitled to multiple damages under the False Claims Act, to be determined at trial, plus a civil penalty for each such false or fraudulent claim.

Count Three - Breach of Contract

32. Plaintiff restates paragraphs 1-25, inclusive, as if fully set forth herein.

33. By virtue of its participation in the Medicaid Managed Care programs described herein, Plaintiff and the Defendant had a contractual relationship.

34. Defendant breached that contractual relationship.

35. As a result, the United States suffered damages, the amount of which is to be determined at trial.

Count Four - Unjust Enrichment

36. Plaintiff restates paragraphs 1-25, inclusive, as if fully set forth herein.

37. This is a claim for the recovery of monies by which the defendant has been unjustly enriched.

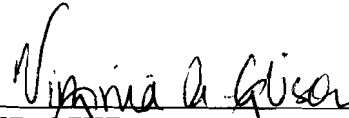
38. As a result of the facts alleged in this Count, the defendant has maintained control over certain monies to which it is not entitled.

39. By maintaining monies to which it was not entitled, the defendant is unjustly enriched, and is liable to account for and

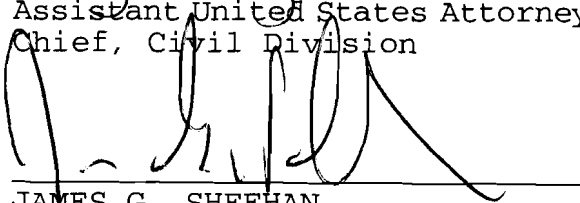
pay such amounts or the proceeds therefrom, to be determined at trial, to the United States.

Respectfully submitted,


LAURIE MAGID
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CERTIFICATE OF SERVICE

I hereby certify that on this 26th day of October, 2006, I caused a true and correct copy of the foregoing UNITED STATES' COMPLAINT-IN-INTERVENTION to be served by first class mail, postage prepaid, upon the following:

Joel M. Friedman, Esquire
Levan Friedman LLP
Two Penn Center
1500 John F. Kennedy Boulevard
Suite 1422
Philadelphia, Pennsylvania 19102

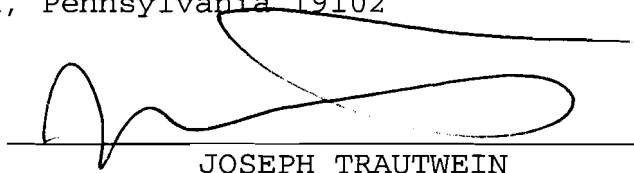


JOSEPH TRAUTWEIN

CERTIFICATE OF SERVICE

I hereby certify that on this 25th day of October, 2006, I caused a true and correct copy of the foregoing UNITED STATES' COMPLAINT-IN-INTERVENTION to be served by first class mail, postage prepaid, upon the following:

Joel M. Friedman, Esquire
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